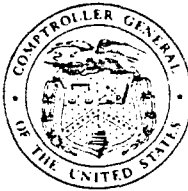


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-185684

DATE: April 19, 1976

MATTER OF: Valley Construction Company

DIGEST:

Inadvertent omission of bidder from applicable bidder's mailing list is not compelling reason to cancel solicitation or question award when there is no evidence of conscious or deliberate effort by procurement activity to preclude bidder from competing and adequate competition results in reasonable prices.

The Valley Construction Company (Valley) protests any contract award for construction of an ammunition storage facility at Moody Air Force Base (Moody) resulting from invitation for bids (IFB) F09607-76-09027. Valley's protest stems from the fact that it was not solicited to compete for the referenced procurement.

The IFB was issued on December 15, 1975, with a scheduled bid opening of January 9, 1976. Prior to this time, Valley states that it had performed significant amounts of construction work at Moody. Further, Valley states that on November 24, 1975, it received a letter dated November 20, 1975, from the Chief, Procurement Division at Moody, forwarding a bidder's mailing list application (Standard Form (SF) 129) with instructions pertaining to construction services. That letter indicated the possibility of "upcoming construction projects" and that upon receipt of a completed SF 129 from Valley that Moody "will place your firm [Valley] on our [Moody's] bidder's mailing list." Valley's completed SF 129 was received by Moody on December 2, 1975.

On December 8, 1975, Moody mailed preinvitation notices to 42 firms on the applicable bidder's mailing list. Valley was not one of the 42 firms. Also, on December 8, 1975, synopses were mailed to the Commerce Business Daily (CBD) for publication on December 15. Also, plans and specifications were sent to the F. W. Dodge Company, a commercial construction advertising agency which provides contractors with information on military construction projects in geographical areas. Valley maintains that it did not become aware of the instant procurement until the day before bid opening (January 8). At that time, Valley requested that bid opening

be postponed in order to enable it to submit a bid. The refusal of this request prompted the instant protest.

Inadvertent actions of an agency which preclude a potential supplier (even an incumbent contractor) from competing on a procurement does not constitute a compelling reason to resolicit so long as adequate competition was generated and reasonable prices were obtained and there was no deliberate or conscious attempt to preclude the potential supplier. Scotts Graphic, Incorporated, et al. 54 Comp. Gen. 973 (1975), 75-1 CPD 302.


We note that publication of the procurement action in the CBD is required by Armed Services Procurement Regulation (ASPR) § 1-1005.1(a) and (b) (1975 ed.). Further, we consider publication of procurement information in the CBD as notice to all parties. Del Norte Technology, Inc., B-182318, January 27, 1975, 75-1 CPD 53. The public advertising weighs heavily against any inference that a deliberate attempt to exclude Valley existed. Non-Linear Systems, Inc., B-182636, February 12, 1975, 75-1 CPD 91. Therefore, Valley's contention that it was not required to consult the CBD in reliance upon Moody's statement that Valley would be placed on the applicable bidder's mailing list upon submission of the SF 129 must fail.

It is implicit in Moody's statement that Valley would be included on its applicable bidder's mailing list that such action would be taken in accordance with Moody's standard procedures. Moody states that the bidder's mailing lists were updated on a monthly basis. The earliest time that a SF 129 received on December 2 would result in inclusion of the list would be December 30. The master list consists of approximately 220 firms, which is rotated, as per ASPR § 2-205.4 (1975 ed.). Under this system, 42 firms were solicited. Another nine IFB's were sent as a result of additional requests. Although Valley had performed other construction work at Moody, it was all performed for the Corps of Engineers. The Air Force's master list did not automatically include contractors of a different element.

B-185684

Lastly, Valley disputes that the receipt of three bids constitutes adequate competition. Not all bidders are required to compete in order to achieve adequate competition, but each case must be reviewed on its own facts. C.G.C.I., B-184690, March 2, 1976. This is so even when the incumbent contractor is inadvertently omitted. 54 Comp. Gen. supra, and cases cited therein. Here, Moody determined that the prices received were reasonable. Further, the existence of three bids which result in reasonable prices may be deemed adequate competition.

Therefore, the protest is denied.


Deputy Comptroller General
of the United States